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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.F., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
J.F.,  
Defendant and Appellant.

A157542

(Contra Costa County  
Super. Ct. No. J19-00252)

After finding that appellant J.F. (Appellant) committed a felony violation of Vehicle Code section 2800.2, subdivision (a)<sup>1</sup> (evading a peace officer with a willful or wanton disregard for the safety of persons or property) and a misdemeanor violation of section 12500, subdivision (a) (unlicensed driver), the juvenile court declared Appellant a ward of the court. Among other conditions of probation, the court imposed a one-year prohibition on driving and a \$100 restitution fine.

<sup>1</sup> All undesignated statutory references are to the Vehicle Code.

Appellant contends that the one-year prohibition on driving must be stricken pursuant to section 13203 because it was not authorized by section 13201, and that the trial court improperly imposed a restitution fine of \$100 without assessing his ability to pay.

We conclude the court's order prohibiting Appellant from driving for one year was proper because Appellant did not fall within the purview of section 13203. We further conclude the \$100 restitution fine was properly imposed.

### BACKGROUND

In the early morning hours of February 2, 2019, Jonathan W. (Jonathan) drove his father's Ford Bronco to a friend's house, without his father's permission. Appellant was at the friend's house. Jonathan testified under a grant of immunity that Appellant, who does not have a driver's license, asked to drive the Bronco. Jonathan agreed. Appellant sat in the driver's seat, Jonathan sat in the front passenger seat, and two other juveniles sat in the back. After driving to a gas station, Appellant began driving back to the friend's home.

At around 3:11 a.m., CHP Officer Vitaliy Matsuka saw the Bronco make a left turn without its headlights on, and he activated his emergency lights to conduct an enforcement stop. After slowing down, the Bronco abruptly accelerated and drove off at 40 to 50 miles per hour. Jonathan testified that when he told Appellant to pull over, Appellant "said he just needed to go. He couldn't get caught." After following the vehicle through a residential area, where it was traveling around 80 miles per hour, Officer Matsuka saw the Bronco fishtail near a light pole and fail to stop at both a stop sign and red light. Officer Matsuka determined it was not safe to pursue the vehicle and discontinued the pursuit.

Appellant subsequently pulled over in an industrial area and all four juveniles exited the car and hid in nearby bushes. Around 4:00 a.m. the police apprehended them and found the Bronco's key in Appellant's pocket.

The Contra Costa County District Attorney filed a wardship petition pursuant to Welfare and Institutions Code section 602 alleging that Appellant committed a felony violation of evading a police officer with a willful or wanton disregard for the safety of persons or property (§ 2800.2, subd. (a); count one) and a misdemeanor violation of being an unlicensed driver (§ 12500, subd. (a); count two). After a contested jurisdictional hearing, the juvenile court sustained the petition.

In June 2019, Appellant was declared a ward of the court and, among other conditions of probation, the juvenile court imposed a one-year prohibition on driving.

Over defense counsel's objection that Appellant lacked the ability to pay, the juvenile court also imposed a \$100 restitution fine.

This appeal followed.

## DISCUSSION

### I. *The One-Year Prohibition on Driving*

#### A. *Statutory Scheme*

Section 13201 provides: "A court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses: [¶] . . . [¶] (d) evading a peace officer in violation of . . . Section 2800.2 . . . ."

Section 13203 states that, "In no event shall a court suspend the privilege of any person to operate a motor vehicle or as a condition of probation prohibit the operation of a motor vehicle for a period of time longer than that specified in this code. Any such prohibited order of a court,

whether imposed as a condition of probation or otherwise, shall be null and void, and the department shall restore or reissue a license to any person entitled thereto irrespective of any such invalid order of a court.”

Finally, subdivision (a) of section 12500 provides in part that “[a] person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver’s license issued under this code, . . .”

B. *Analysis*

The juvenile court imposed a one-year prohibition on Appellant driving as a condition of probation after declaring Appellant a ward of the court. Appellant contends this prohibition was unlawful because section 13203 limited the court to the six-month suspension specified in section 13201. We disagree.

1. *Appellant is Not Foreclosed from Raising the Issue on Appeal*

The parties dispute whether the issue was preserved for appeal because Appellant failed to object in the juvenile court to the one-year prohibition on driving. Appellant contends that the issue may be raised for the first time on appeal because the condition was not statutorily authorized. The People counter that Appellant’s failure to object to the reasonableness of the probation condition forfeits the issue on appeal.

When an issue on appeal presents a question of law that implicates a legislative directive, appellate review is appropriate. (*In re Colleen S.* (2004) 115 Cal.App.4th 471, 476 (*Colleen S.*)) As an unauthorized sentence “could not lawfully be imposed under any circumstance,” it is a pure question of law, independent of any factual issues. (*People v. Scott* (1994) 9 Cal.4th 331, 354.)

In this case, whether the juvenile court’s condition of probation was prohibited by section 13203 is a statutory question presenting a pure

question of law. Accordingly, Appellant may challenge the condition on appeal, even though he failed to object in the juvenile court.

2. *The One-Year Prohibition Was Not Unlawful*

The parties dispute whether the juvenile court's order prohibiting Appellant from driving for one year was barred by section 13203. Appellant argues the one-year driving prohibition violated section 13203 because it exceeded the six-month period set forth in section 13201. The People contend section 13203 does not govern because it applies only to those holding a valid driver's license.

In interpreting section 13203, we must "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.) In order to determine the intent of the legislature, we first look to the statutory language, giving it a "plain and common sense meaning." (*People v. Cole* (2006) 38 Cal.4th 964, 975.) "We do not, however, consider the statutory language in isolation; rather, we look to the entire substance of the statutes in order to determine their scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statutes' nature and obvious purposes. [Citation.] We must harmonize the various parts of the enactments by considering them in the context of the statutory framework as a whole." (*Ibid.*)

The first sentence of section 13203 provides that, "In no event shall a court suspend the privilege of any person or as a condition of probation prohibit the operation of a motor vehicle for a period of time longer than that specified in this code . . . ." Although a juvenile court has broad discretion in fashioning conditions of probation, "an explicit legislative directive overrides the broad discretion otherwise conferred by Welfare and Institutions Code

section 730.” (*Colleen S.*, *supra*, 115 Cal.App.4th at p. 475.) Thus, Appellant argues, a juvenile court is expressly prohibited by section 13203 from imposing a prohibition on driving for longer than the six-month period specified in section 13201.

Appellant relies on *Colleen S.*, which he contends is determinative. In that case, the juvenile court had suspended a minor’s driving privilege for an indeterminate period after sustaining a petition alleging the 17-year-old licensed driver had committed felony gross vehicular manslaughter. (*Colleen S.*, *supra*, 115 Cal.App.4th at pp. 472–473.) *Colleen S.* held the indefinite suspension was unauthorized because section 13203 barred the court from suspending a license for more than 12 months for a conviction of misdemeanor vehicle manslaughter, as set forth in section 13556. (*Colleen S.*, at p. 475.)

*Colleen S.* is distinguishable because the driver in that case was properly licensed. Construing the terms “driving privilege” or “privilege of any person to operate a motor vehicle” in section 13203 to require a valid license to drive is consistent with section 12500, subdivision (a), which provides that, “[a] person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver’s license issued under this code.”<sup>2</sup>

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<sup>2</sup> Sections 13101 and 13102 are consistent with section 12500 in conditioning the privilege to drive on having a driver’s license. Section 13101 provides: “When used in reference to a driver’s license, ‘revocation’ means that the person’s privilege to drive a motor vehicle is terminated and a new driver’s license may be obtained after the period of revocation.” Section 13102 provides: “When used in reference to a driver’s license, ‘suspension’ means that the person’s privilege to drive a motor vehicle is temporarily withdrawn. The department may, before terminating any suspension based upon a physical or mental condition of the licensee, require such examination of the licensee as deemed appropriate in relation to evidence of any condition which may affect the ability of the licensee to safely operate a motor vehicle.”

Thus, within the statutory framework, a person only has the “privilege” to operate a motor vehicle if they have a license to do so.

Because section 13203 applies only to those holding a valid driver’s license and Appellant was unlicensed, the juvenile court was not limited by that provision. The probation condition prohibiting Appellant from driving for one year was not unauthorized.

## II. *No Remand for Ability to Pay Determination*

Appellant was ordered to pay a \$100 restitution fine under Welfare and Institutions Code section 730.6, over defense counsel’s objection that Appellant lacked the ability to pay the fine. Appellant contends the matter should be remanded for a hearing on his ability to pay the fine, under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). We reject the claim.

Welfare and Institutions Code section 730.6, subdivision (b) provides, “If a minor is found to be a person described in [Welfare and Institutions Code s]ection 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows: [¶] (1) If the minor is found to be a person described in [Welfare and Institutions Code s]ection 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000). A separate hearing for the fine shall not be required.” Welfare and Institutions Code section 730.6, subdivision (c) provides that the fine “shall be imposed regardless of the minor’s inability to pay,” and subdivision (d)(2) provides that “[t]he consideration of a minor’s ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.”

In *Dueñas*, *supra*, 30 Cal.App.5th 1157, the defendant was indigent, homeless, a mother of two young children, afflicted with cerebral palsy, and barely surviving on public assistance. (*Id.* at pp. 1160–1161.) Her driver’s license had been suspended because she was unable to pay assessments on juvenile citations, and she subsequently suffered a series of misdemeanor convictions for driving with a suspended license. (*Id.* at p. 1161.) In each case, she “was offered the ostensible choice of paying a fine or serving jail time in lieu of payment,” but each time she was unable to pay and served time in jail. (*Ibid.*) When she suffered another misdemeanor conviction for driving with a suspended license, she asked the trial court to set a hearing to determine her ability to pay court fees. (*Id.* at p. 1162.) The trial court imposed a restitution fine and court facilities and operations assessments, concluding they were mandatory. (*Id.* at p. 1163.) On appeal, the *Dueñas* court held it violated the defendant’s constitutional right of due process to impose the fine and assessments without a determination of her ability to pay. (*Id.* at pp. 1168, 1172.)

Assuming the reasoning in *Dueñas* applies in juvenile proceedings, we agree with those courts that have concluded that *Dueñas*, although possibly correct on its facts, was incorrect to the extent it stated a broader rule that, as a matter of constitutional due process, an ability-to-pay hearing is required before imposition of fines and assessments. (See, e.g., *People v. Hicks* (2019) 40 Cal.App.5th 320, review granted Nov. 26, 2019, S258946; *People v. Aviles* (2019) 39 Cal.App.5th 1055 (*Aviles*).) As these cases explain, in contrast to the two strands of authority on which *Dueñas* relied, the failure to determine ability to pay a restitution fine and assessments does not,



absent unusual circumstances, impair a defendant's access to the courts or subject them to imprisonment as a consequence.<sup>3</sup>

In any event, any error in imposing the \$100 fine without considering ability to pay is harmless beyond a reasonable doubt. The juvenile court is authorized to consider a minor's future earning capacity in determining ability to pay, and Appellant points to nothing in the record indicating he is unable to earn \$100 to repay the fine. (See *Aviles, supra*, 39 Cal.App.5th at p. 1076.)

Imposition of the \$100 restitution fine in the present case did not violate Appellant's right to due process.<sup>4</sup>

#### DISPOSITION

The juvenile court's orders are affirmed.

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<sup>3</sup> The *Dueñas* issue is before the California Supreme Court in *People v. Kopp* (2019) 38 Cal.App.5th 47, review granted Nov. 13, 2019, S257844.

<sup>4</sup> Appellant also references his right to equal protection of the laws, asserting that *Dueñas* relied on both due process and equal protection principles. However, *Dueñas* ultimately rooted its decision on the defendant's right to due process. (*Dueñas, supra*, 30 Cal.App.5th at p. 1168, fn. 4.)

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.

(A157542)